(b) and (c) The estimated impact on the licence fee figurs of the financial year 2004-05 would be of the order of Rs. 400 crores annually at tariff and traffic as on 31.3.2005. However, it is felt that reduction in licence fee normally dues not make a negative impact for the contribution to the exchequer in terms of absolute values over a period of time due to increase in traffic.

(d) The change in licence fee and roll out obligations is applicable to existing as well as new entrants. The players have demanded compensation for difference in fee, cost of capital for capital expenditure for additional rollout, cost of capital for providing Bank Guarantees and difference in annual licence fee.

Depth of tower for receiving network

1687. SHRI DHARAM PAL SABHARWAL: Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) what should be the ideal depth of the tower for receiving the network without any disturbances;

(b) whether the required depth are being maintained; and

(c) if so, the details thereof and if not, the reasons therefor?

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DR. SHAKEEL AHMAD): (a) to (c) The depth of tower depends upon soil conditions, height of tower and type of tower. The depth of tower have no correlation with the coverage without any disturbance.

Appointment of foreign nationals in telecom sector

1688. SHRI DHARAM PAL SABHARWAL: Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether there is ambiguity with regard to appointment of top foreign national executives in telecom sector companies after the raising of FDI ceiling;

(b) if so, the action taken to clear the ambiguity;

(c) whether foreign nationals working in Indian Telecom companies would continue to hold same positions after the issue of guidelines on FDI ceiling; and

(d) if so, the details in this regard?

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DR. SHAKEEL AHMAD): (a) No, Sir.

(b) Does not arise in view of (a) above.

(c) and (d) The appointment of foreign nationals at certain key positions of the companies providing telecom services will be as per guidelines prescribed in the press Note No. 5, (2005 Series) dated 03.11.2005, copy of press note is given in the enclosed Statement.

Statement

Copy of the press note issued by Ministry of Commerce and Industry

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Secretariat for Industrial Assistance

PRESS NOTE NO. 5 (2005 SERIES)

Subject: Enhancement of the Foreign Direct Investment ceiling from 49th per cent to 74 per cent in the Telecom sector.

1. In pursuance of the Government's commitment to liberalise the FDI regime, it has been decided to enhance the Foreing Direct Investment ceiling from 49 per cent to 74 per cent in certain telecom services [such as Basic, Cellular, Unified Access Services, National/International long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added services], subject to the following conditions:—

A. The total composite foreign holding including hut not limited to investments by Foreign Institutional Investors (Flls), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign

investment in Indian promoters/investment companies including their holding companies, etc., hereinafter referred as FDI, will not exceed 74 per cent. Thus, 74 per cent foreing investment can be made directly or indirectly in the operating company or through a holding company. Hence, the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. Foreign Direct Investment does not exceed 49 per cent and the management is with the Indian owners). It is clarified that proportionate foreign component of such as Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.

B. The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens, enforced through licence agreement. The appointment to these positions from among resident Indian citizens shall be made in consultation with serious Indian investors. Serious investor has been defined below inpara G(ii).

C. The share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and CEO shall be resident Indian citizens and shall also envisage the conditions of adherence to Licence Agreement.

D. FDI upto 49 per cent will continue to be on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment
proposals, FIPB shall take note that investment is not coming from unfriendly countries.

E. The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

F. FDI shall be subject to laws of India and not the laws of the foreign country/countries.

(G) Department of Telecommunications (DoT) will enforce the above and the conditions mentioned below through appropriate amendment in licence:-

(i) There shall be a non-obstante clause in the licence which confers powers upon the licensor to cancel the licence under certain defined circumstances.

(ii) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.

(iii) The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the licence agreement shall automatically lead to the company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.

(iv) Chief Technical Officer (CTO) Chief Finance Officer (CFO) shall be resident Indian Citizens. The Licensor/DoT shall also be empowered to notify key positions to be held by resident Indian citizens.

(v) The Company shall not transfer the following to any person/ place outside India.-

(a) any accounting information relating to subscriber (except for raming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature);

(b) user information (except pertaining to foreign subscribers using Indian Operator's network while roaming) and

(c) details of their infrastructure/network diagram except to telecom equipment suppliers/manufactures who undertake the installation, commissioning etc. of the infrastructure of the licensee company on signing of nondisclosure agreement.

(vi) The company when entering into roaming agreements with service providers outside India must provide, on demand, the

list of such users (telephone numbers, in case of foreign subscribers using Indian Operator's network while roaming).

(vii) The Company must provide traceable identity of their subscribers. However, in case of providing service to reaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of reaming subscribers from the foreign company as a part of its roaming agreement.

(viii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India

(ix) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency out side the country for any maintenance/repair by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming non-functional for a prolonged period, subject to meeting the following conditions-

(a) An identified Government agency (Intelligence Bureau) will be notified, when RA is to be provided.

(b) Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance.

(c) The control of Remote Access *i.e.* activation, transfer of data termination etc. shall be within the country and not at a Remote location, abroad.

(d) The Government agency will be given all support to record the transactions for on-line monitoring.

(e) Any equipment or software that forms part of the overall monitoring shall not be permitted to have remote access under any circumstances.

(f) DoT will define appropriately the terms catastrophic software failure, major part of the network, and prolonged period used under this clause.

(x) It shall be open to the Department of Telecommunications to restrict the Licensee Company from operating in any sensitive area from the national Security angle.

(xi) In order to maintain the privacy of voice and data, monitoring shall only be upon authorization by the Union Home Secretary or Home Secretaries of the States/Union Territories.

(xii) For monitoring traffic the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.

(xiii) In case of not adhering to Licence conditions envisaged in para G the licence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance bank guarantee(s) and the licensor shall not be liable for loss of any kind.

2. The conditions at para 1 above shall also be applicable to the existing companies operating telecom service(s) which had the FDI cap of 49%.

3. The relevant provisions of FDI policy for "investment companies', as given in Press Note 2 (2000 series) dated 11.2.2000 issued by department of Industrial Policy and Promotion will no longer be applicable to telecom sector.

4. An initial correction time of 4 months from the date of issue of this notification shall be allowed to the existing licensee companies providing telecom services mentioned in para 1 above for ensuring adherence to the aforesaid conditions. As unconditional compliance to the aforesaid conditions shall be submitted to the licensor within this period.

5. Press Note 15 (1998 series) and Press Note 2 (2000 series) issued by Department of Industrial Policy & promotion stand modified to the above extent.

Sd/-
(UMESH KUMAR)
Joint Secretary to the Government of India

No. 9 (1) 2002-FC dated 3rd November, 2005